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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

I-ENTERPRISE CO.,

No. C-03-01561 MMC (EDL)

Plaintiff,

**ORDER DENYING DEFENDANTS'
MOTION TO COMPEL PRODUCTION
OF NOTE PASSED DURING
DEPOSITION**

v.

DRAPER FISHER JURVETSON
MANAGEMENT CO., et al.,

Defendants.

/

As part of Defendants' Motion to Compel filed on October 4, 2005, Defendants sought production of a note that was shown to deponent Stephen Roy by his counsel during Mr. Roy's deposition. At the hearing on Defendants' motion, the Court ordered Plaintiff's counsel to submit declarations regarding the contents of the note and the efforts made to locate it, which counsel did on November 15, 2005. Also at the hearing, Defendants provided a DVD containing the videotaped deposition of Mr. Roy.

The Court has carefully reviewed both the DVD and the declarations. It is unclear from the DVD whether a question was pending at the time the note was allegedly shown to Mr. Roy. At one point, Mr. Roy waves his hand in the general direction of someone off camera (presumably his counsel), but the video does not show a note or that Mr. Roy read a note. Further, the note no longer exists; it was thrown away at the deposition. Peters Decl. ¶¶ 3-4. Even if the note still existed, the Court has reviewed Mr. Roy's attorney's declaration in camera and it is satisfied that the contents of the note had nothing to do with a pending question, if any. Ex parte Peters Decl. ¶ 3.

1 Accordingly, Defendants' motion to compel production of the note is denied.

2 **IT IS SO ORDERED.**

3 Dated: November 16, 2005

Elizabeth D. Laporte
4 ELIZABETH D. LAPORTE
United States Magistrate Judge